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1 - Power plant rule will spur industrial growth, keep coal in energy mix -- McCarthy, Greenwire, 9/20/13

<http://www.eenews.net/greenwire/2013/09/20/stories/1059987625>

U.S. EPA Administrator Gina McCarthy sought to rebuff criticism today that her agency's proposed carbon rule for new power plants would damage the economy, saying it would spur investments in clean technology.

2 – An Important Step on Global Warming (editorial), The New York Times, 9/22/13

http://www.nytimes.com/2013/09/23/opinion/an-important-step-on-global-warming.html?_r=1&

On Friday, in a move that has already caused dismay in industry and among Congressional Republicans, the Obama administration proposed the first-ever federal limits on power plant emissions of carbon dioxide, which account for nearly 40 percent of the greenhouse gases America contributes to a gradually warming climate.

3 - Capitol Hill sounds off on EPA's power plant rule, E&E News, 9/20/13

<http://www.eenews.net/eenewspm/2013/09/20/stories/1059987632>

The release of the U.S. EPA proposal for curbing carbon emissions from power plants sparked strong reactions on Capitol Hill today over whether the rule would save the planet or destroy the economy.

4 - EPA proposal isn't likely to have much impact on Oklahoma, The Oklahoman, 9/20/13

http://newsok.com/epa-proposal-isnt-likely-to-have-much-impact-on-oklahoma/article/3885244?custom_click=rss

New fossil-fueled electric generation plants will have to meet strict emissions standards for carbon dioxide under a proposed rule announced Friday by the Environmental Protection Agency.

5 – Report says regulators ignoring health risks of Eagle Ford, San Antonio Express-News, 9/20/13

<http://www.mysanantonio.com/business/eagle-ford-energy/article/Report-says-regulators-ignoring-health-risks-of-4831008.php>

A new report from the nonprofit environmental group Earthworks says government regulators are ignoring health risks in the Eagle Ford Shale region.

6 - Nucor permit battles continue on legal, regulatory fronts, Baton Rouge Advocate, 9/21/13

<http://theadvocate.com/home/7101821-125/nucor-permit-battles-continue-on>

The state Department of Environmental Quality will need to decide in the next month on which court action to try next in an effort to get the U.S. Environmental Protection Agency to either find something wrong with permits for two facilities or remove their objections.

7 - Refinery Agrees to Pay \$8.75 Million For Failure to Comply With 2007 Settlement, BNA, 9/19/13

http://www.nola.com/health/index.ssf/2013/09/st_bernard_brain-eating_amoeba.html

Under an amended consent decree, Total Petrochemicals USA Inc. agreed to pay an \$8.75 million penalty for failing to comply with requirements of a 2007 settlement that resolved alleged violations of the Clean Air Act at the company's refinery in Port Arthur, Texas (United States v. Total Petrochemicals USA Inc., E. D. Tex., No. 1:07-cv-00248, 9/20/13).

8 - The Arsenic in Our Drinking Water, The New York Times, 9/20/13

<http://well.blogs.nytimes.com/2013/09/20/the-arsenic-in-our-drinking-water/>

The baby with the runny nose, the infant with a stubborn cough — respiratory infections in small children are a familiar family travail. Now scientists suspect that these ailments — and many others far more severe — may be linked in part to a toxic element common in drinking water.

9 - Coastal Wetland Act still vital, Baton Rouge Advocate, 9/23/13

<http://theadvocate.com/home/7094257-125/coastal-wetland-act-still-vital>

The Coastal Wetland Planning, Protection and Restoration Act, passed by Congress in 1990, created a lot of firsts for Louisiana.

10 – With EPA Climate Rule On Stronger Footing, NAM Seeks Narrow Air Act Fixes, Inside EPA, 9/20/13

<http://insideepa.com/201309212447628/EPA-Daily-News/Daily-News/with-epa-climate-rule-on-stronger-footing-nam-seeks-narrow-air-act-fixes/menu-id-95.html>

Industry groups are conceding that EPA's repropose greenhouse gas (GHG) rule for new power plants includes a more robust technical and legal basis for the policy than an earlier version, which could help it survive expected lawsuits, and are asking Congress to make narrow Clean Air Act fixes to limit the agency's power to regulate GHGs.

11 - Feds promise to work with businesses on meeting emissions goals, The Hill, 9/20/13

<http://thehill.com/blogs/regwatch/energyenvironment/323693-feds-promise-to-work-with-businesses-on-meeting-emissions-goals->

The Obama administration is pledging to help the energy sector meet new demands on power plant emission levels.

12 - Coal-state Dem candidates rip Obama for new EPA rules, The Hill, 9/20/13

<http://thehill.com/blogs/ballot-box/senate-races/323767-coal-state-dem-candidates-rip-obama-for-new-epa-rules>

Coal-state Democratic candidates are lashing out at President Obama for new Environmental Protection Agency emissions standards that would squeeze the coal industry.

13 - Pollution rule hurts coal, helps other sources, Houston Chronicle, 9/23/13

<http://fuelfix.com/blog/2013/09/23/pollution-rule-hurts-coal-helps-other-sources/>

Tough new limits on the amount of heat-trapping emissions new power plants can emit will likely accelerate a shift away from coal-fired power and toward electricity generated with natural gas, wind, and sunshine.

14 - ANALYSIS-U.S. industry sees carbon-capture as legal chink in EPA rules, Chicago Tribune, 9/20/13

<http://www.chicagotribune.com/sns-rt-usa-energyemissions--analysis-20130920,0,2531873.story>

Faced with the Obama administration's new crackdown on power plant emissions, the coal and electric utility industry is honing a legal strategy it believes could derail the measures.

15 - Shutdown looms but agencies tight-lipped as Congress struggles to keep government running, E&E Daily, 9/20/13

<http://www.eenews.net/eedaily/2013/09/20/stories/1059987572>

In a little more than one week, Congress will hit its deadline to fund the federal government -- and agencies could be forced to put hundreds of thousands of employees on unpaid leave.

16 - Is Brazilian sugarcane the answer to U.S. biofuel needs?, The Christian Science Monitor, 9/21/13

<http://www.csmonitor.com/Business/In-Gear/2013/0921/Is-Brazilian-sugarcane-the-answer-to-U.S.-biofuel-needs>

Brazil believes ethanol made from sugarcane can supplement corn-based ethanol produced in the United States, which would help meet U.S. government targets for increased biofuel consumption.

17 - City: Diesel fuel leaked into Santa Fe reservoir, KOB, 9/22/13

<http://www.kob.com/article/stories/S3168056.shtml?cat=517>

Officials say a small amount of diesel fuel has leaked into one of Santa Fe's municipal reservoirs.

18 - EPA Unlikely To Meet Deadline For Rule Scrapping 'Upset' Emission Policy, Inside EPA, 9/20/13

<http://insideepa.com/201309202447490/EPA-Daily-News/Daily-News/epa-unlikely-to-meet-deadline-for-rule-scrapping-upset-emission-policy/menu-id-95.html>

EPA is "unlikely" to meet a looming Sept. 26 settlement agreement deadline to finalize a rule to force 36 states to rewrite their air plans to scrap Clean Air Act penalty exemptions for "upset" emissions during startup, shutdown and malfunction (SSM) periods that violate emissions limits, says acting EPA air chief Janet McCabe.

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2. CLIMATE:

Power plant rule will spur industrial growth, keep coal in energy mix -- McCarthy

Jason Plautz, E&E reporter

Published: Friday, September 20, 2013

U.S. EPA Administrator Gina McCarthy sought to rebuff criticism today that her agency's proposed carbon rule for new power plants would damage the economy, saying it would spur investments in clean technology.

"We have proven time after time that setting fair Clean Air Act standards to protect public health does not cause the sky to fall," McCarthy said in a National Press Club speech synchronized with EPA's release this morning of the power plant rule. "The economy does not crumble."

The rule proposal -- the long-awaited first piece of President Obama's climate change plan -- would cap carbon emissions from new power plants, requiring future coal-fired facilities to limit emissions of carbon dioxide to 1,100 pounds per megawatt-hour, while large combined cycle natural gas facilities must meet a standard of 1,000 pounds per MWh ([see related story](#)).

The proposal is taking heavy fire from industry groups and congressional Republicans, who say the rule would block the construction of new coal plants and that the technology required to comply will raise power prices and hamstring the economy.

But McCarthy said the proposal is a "reasonable, cost-effective strategy" and would keep coal in the country's future power mix.

"Our standards, rather than doing damage, can actually promote the industry sector to grow," McCarthy said. "We worked strongly with the utilities to understand what technologies are available, and we will continue to work with them over the comment period. ... It's going to get them prepared as time goes on to be competitive in a carbon-constrained world."

McCarthy also emphasized that the proposal reflects comments from states, industry groups and other stakeholders. The final rule due out next year, she said, will continue to incorporate input from all sides.

The fact that the new plan incorporates changes from a proposal last year -- creating different emission limits for different technologies and allowing flexibility for coal plants by permitting them to average emissions over multiple years -- shows the importance of the comment process, she said.

The rule is set to be finalized next fall, McCarthy said, but she noted that EPA over the course of the comment period would "pay attention," saying that there might be "adjustments" to the final rule.

McCarthy also touted the role of carbon capture and sequestration (CCS) systems, which would be required on new coal plants. Despite concerns that the technology is not ready for widespread use, she said CCS is "feasible and available today" and that the standards would "set the stage for continued public and private investment."

"With these investments, technologies will eventually mature and become as common for new power plants as scrubbers have become for well-controlled plants today," McCarthy said.

The coal industry has warned that the CCS mandate would effectively end the construction of new coal-fired plants.

McCarthy also laid a course for future action on climate change, including a rule on existing power plants to be proposed in June 2014.

The proposal today, she said, was "an important step forward in our clean energy journey," but not the final one.

"We know that climate change and protecting our kids from harmful pollution can't be solved overnight," McCarthy said. "It's going to take a broad, concerted effort from all levels of government, as well as the international community."

"The good news is, we can successfully face the challenge of climate change if we work together."

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The New York Times

September 22, 2013

An Important Step on Global Warming

By **THE EDITORIAL BOARD**

On Friday, in a move that has already caused dismay in industry and among Congressional Republicans, the **Obama administration proposed** the first-ever federal limits on power plant emissions of carbon dioxide, which account for nearly 40 percent of the greenhouse gases America contributes to a gradually warming climate.

The move, the first in a suite of executive actions on climate change promised by President Obama in June, is a welcome sign of his determination to move ahead on his own authority and bypass a Congress whose interest in tackling global warming is virtually nil.

The proposed limits — which apply only to new power plants — will have no immediate effect on carbon emissions. But the long-term consequences for the way the nation produces energy will be significant.

The rules would restrict emissions at new natural gas-fired plants to 1,000 pounds of carbon dioxide per megawatt-hour, and at new coal plants to 1,100 pounds per megawatt-hour. Because existing coal plants, even advanced ones, produce about 1,800 pounds per megawatt-hour, industry will find it virtually impossible to build new coal plants without capturing and storing some or all of their carbon emissions — a technology the administration has promised to promote but which has not been commercially demonstrated on a wide scale. New gas-fired plants should easily fit under the new limits because they now produce only about 800 to 850 pounds per megawatt-hour.

The rules for new plants are far less costly and contentious than the rules the Environmental Protection Agency is now drawing up to regulate thousands of existing power plants, the ones producing all those emissions. Even so, the coal industry and its Congressional allies are already up in arms. In a typical comment, Mitch McConnell, the Senate Republican leader, described the rules for new plants as an “escalation” of the administration’s “war on jobs” and a further manifestation of its “war on coal.”

This greatly oversimplifies matters. Coal’s share in the national energy mix has been declining; coal provided more than half of electricity generation in 2003 but only 37 percent in 2012. New regulations governing emissions of mercury and other pollutants have accounted for part of this decline by forcing utilities to retire some older coal-fired plants. But coal’s main enemy has been the marketplace — the discovery of abundant supplies of cheaper natural gas and the remarkable advances in wind and solar power that have encouraged power companies, for economic reasons

alone, to switch to cleaner fuels.

Our advice to Mr. Obama and his new E.P.A. administrator, Gina McCarthy, is to ignore industry's usual claim that the sky is falling and push ahead. For various reasons — the recession, the closing of some coal-fired plants, the tough new automobile mileage standards — the United States has made commendable progress in reducing its emissions, and is halfway toward meeting Mr. Obama's pledge at the Copenhagen climate summit meeting in 2009 to reduce its emissions by 17 percent from 2005 levels by 2020.

But the news from the rest of the world — steadily increasing atmospheric concentrations of carbon dioxide, rising sea levels, more violent weather events, persistent droughts — is not encouraging. The burden on the United States to set a positive example is as heavy as ever.

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5. CLIMATE:

Capitol Hill sounds off on EPA's power plant rule

Jean Chemnick, E&E reporter

Published: Friday, September 20, 2013

The release of the U.S. EPA proposal for curbing carbon emissions from power plants sparked strong reactions on Capitol Hill today over whether the rule would save the planet or destroy the economy.

Democrats who've been frustrated in their efforts to pass comprehensive climate change legislation praised the Obama administration for using the Clean Air Act to rein in heat-trapping emissions from future power plants ([Greenwire](#), Sept. 20).

House Energy and Commerce ranking member Henry Waxman (D-Calif.) called the proposal "achievable" and said it would "spur innovation in clean coal technologies like carbon capture and sequestration."

"The proposal will clean up the air and make the U.S. a world leader in advanced pollution control technology," he said.

"These new standards from EPA will reduce the pollution that's been wreaking havoc on our oceans, atmosphere and health," said Sen. Sheldon Whitehouse (D-R.I.), who with Waxman chairs the Bicameral Task Force on Climate Change.

"The EPA is sending a strong message to polluting industries that it's time for them to clean up their act," he said.

Sen. Ed Markey (D-Mass.), who as a House member collaborated with Waxman in 2009 on comprehensive climate and energy legislation that cleared the House, said industry had "no reason to complain" now that the administration was moving ahead with CO2 regulations.

"Because when Congress offered a solution to pass a climate and energy bill that would provide billions of dollars to help power companies develop advanced carbon-cutting technologies, they instead chose to hire lobbyists and kill the bill," he said.

But Republican lawmakers found plenty to complain about in the rule, which requires all future power plants to use carbon capture and storage (CCS) technology to limit emissions. Industry says the mandate amounts to a ban on new coal-fired electric generation and has warned it will be legally vulnerable ([see related story](#)).

House Science, Space and Technology Chairman Lamar Smith (R-Texas) called it an "assault on affordable energy by effectively prohibiting any new coal-fired power plants from being built."

"Yet again, EPA is offering a costly, heavy-handed proposal that risks jobs and economic growth, all for negligible changes to our carbon dioxide emissions and no discernible impact on the global temperature," Smith said.

The rule is the first EPA proposal to curb CO2 from stationary sources, and Smith said it was a bad beginning.

"This rule sets a dangerous precedent that EPA will soon extend to other sectors, including refineries," he said.

Energy and Commerce Chairman Fred Upton (R-Mich.) said, "We are the Saudi Arabia of coal, but this impractical rule restricts access to one of our most abundant, affordable and dependable energy sources. The consequences will be more job losses and a weaker economy."

Rep. Ed Whitfield (R-Ky.) pledged to use his chairmanship of the Energy and Power Subcommittee to stop the proposal.

"If it is as bad as we think it's going to be, I, along with other Republicans and Democrats in the United States Congress, will take every step possible to prevent this regulation from taking effect," he said. "We simply cannot afford to place America at an economic disadvantage, particularly when CO2 energy-related emissions are at their lowest levels in 20 years."

Whitfield has said he plans to offer a bill that would limit EPA's upcoming rules for CO2 to levels that industry says it can reliably achieve. But its prospects for Senate passage are slim.

A vote on legislation that would have stripped EPA of its authority to regulate greenhouse gas emissions failed in the last Congress to draw the 60 votes needed to clear the Senate.

And while senators have offered amendments to the energy efficiency legislation now before the Senate that would limit EPA's upcoming rules or make them contingent on congressional approval, it is doubtful whether either would attract enough support

to be adopted.

But while the coal industry and most of its congressional supporters fumed, at least one coal ally had positive things to say about the rule -- provided it comes attached to other assistance for CCS.

"The EPA's new carbon emission plan includes tough requirements for future coal-fired power plants and pushes us hard toward clean coal technologies that have great potential but are not yet deployed at full scale and are difficult to finance," said Sen. Jay Rockefeller (D-W.Va.).

He urged the industry, public sector and others to work together to help advance CCS technology.

"This rule is undeniably a daunting challenge, but it's also a call to action," he said. "West Virginia and America have overcome far greater technological obstacles than this one, and I refuse to believe we can't do it again."

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EPA proposal isn't likely to have much impact on Oklahoma

The Environmental Protection Agency proposed a rule Friday that would limit carbon dioxide emissions from new coal and natural gas electric plants.

By [Paul Monies](#) Modified: September 20, 2013 at 10:22 pm • Published: September 21, 2013

New fossil-fueled electric generation plants will have to meet strict emissions standards for carbon dioxide under a proposed rule announced Friday by the Environmental Protection Agency.

The limits on carbon dioxide emissions apply to new coal and natural gas-fired plants. But they will have a greater effect on coal units, which emit almost twice as much carbon dioxide as natural gas units.

The proposed rule is unlikely to affect Oklahoma in the near future, since the state's two largest electric utilities have no current plans to build coal plants. Those plans are in line with the broader utility industry, which is moving toward natural gas for new power plants.

Oklahoma Gas and Electric Co. wants to put off building a new power plant until at least 2020, and has said any new plant would be powered by natural gas. Public Service Co. of Oklahoma plans to phase out its last two coal units in Oklahoma by 2026 and replace the generation with natural gas.

PSO spokesman Stan Whiteford said the utility could be affected by the proposed rule when it decommissions its last coal unit at Northeastern Station near Oologah by 2026.

“These new carbon dioxide limits could very well have an impact on our decision on new generation at that time,” Whiteford said. “Of course, by then, there could be additional advancements in the technology to handle emissions.”

Oklahoma Municipal Power Authority, which plans a new natural gas-fired plant near Ponca City, is studying the EPA's proposed rules, said spokesman Drake Rice. At first glance, it doesn't appear the proposed limits will affect the authority's new natural gas plant, he said. Construction is expected to start in the spring.

Spokesmen for OG&E and PSO said their companies are reviewing the proposed rules for new power plants to see if they might hold clues to another round of regulations by the EPA. The agency is expected to propose rules on carbon dioxide emissions from existing fossil-fueled electric plants by June 2014.

Limits on new plants

The proposed rule on carbon dioxide emissions from new plants calls for limits of between 1,000 and 1,100 pounds of carbon dioxide per megawatt hour of generation. Utilities can choose several options for determining how they will account for the emissions depending on the fuel type.

“These standards will also spark the innovation we need to build the next generation of power plants, helping grow a more sustainable clean energy economy,” EPA Administrator Gina McCarthy said in a statement.

Most new natural gas plants will be able to meet the proposed carbon dioxide limits, EPA said. A typical coal unit without any emissions-capture technology emits about 1,800 pounds of carbon dioxide per megawatt hour.

The agency said new coal plants could meet the standards in a cost-effective way with existing technology, a point disputed by critics who said the carbon-capture and storage methods suggested by the agency haven't been proven on a commercial scale.

In a statement, Sierra Club Executive Director Michael Brune said the proposed rules showed the Obama administration was serious about fighting pollution.

“Each year, more and more Americans are threatened by extreme weather events brought on by carbon pollution,” Brune said. “And up until now, there have been no national standards for the amount of carbon pollution power plants can dump into our air. Big polluters have been getting a free ride for decades, while Americans foot the bill in the form of asthma attacks, respiratory illness, floods, wildfires and superstorms.”

Oklahoma Sen. Jim Inhofe, R-Tulsa, a frequent critic of the EPA and a climate-change skeptic, said the rules will have little effect on a global basis. He said they will harm the economy and raise consumer prices.

“The middle class will be the ones who suffer from these regulations,” Inhofe said. “Jobs in our energy sector will begin to disappear; businesses will find it cheaper to operate overseas; and the price to warm a home in the winter or cool in the summer will skyrocket.”

Oklahoma Attorney General Scott Pruitt, who is fighting several lawsuits against the EPA, said his office is reviewing the potential effects of the proposed rule on Oklahoma's power producers and consumers.

The U.S. Supreme Court ruled in 2007 that EPA had the authority to regulate carbon dioxide emissions as a pollutant under the Clean Air Act. Carbon dioxide makes up 84 percent of greenhouse gases emitted from all sources in the United States. Other greenhouse gases include nitrous oxide, methane and various fluorinated gases.

Report says regulators ignoring health risks of Eagle Ford

By Jennifer Hiller : September 20, 2013 : Updated: September 20, 2013 8:44pm



Photo By Courtesy photo / Marathon Oil Corp.

Drilling operations in the Eagle Ford — this one is a Marathon Oil site — worry some residents.

A new report from the nonprofit environmental group [Earthworks](#) says government regulators are ignoring health risks in the Eagle Ford Shale region.

The report, “Reckless Endangerment While Fracking the Eagle Ford,” focuses on Karnes County, considered the core of the field with some of the most intense drilling. Earthworks took air samples, used an infrared camera that makes releases of methane and volatile organic compounds visible and looked at state investigations of various sites.

Authors of the Earthworks study also spoke with Karnes County residents Mike and [Myra Cerny](#) and their teenage son. Since late 2010, 18 oil wells have been drilled within a mile of their home, and the family reported deteriorating health, including headaches and nosebleeds.

“I can't put into words, because there are no words to express my anger of being placed into this hell with no escape,” Myra Cerny wrote to Earthworks in late 2012. “Each new flare or rig put up around my home leaves me standing there staring and crying.”

The Earthworks study says the rules governing oil and gas development aren't adequate to protect the public.

The [Texas Commission on Environmental Quality](#) disputed the report, saying it has done aerial surveys of the region and 408 investigations since Sept. 1, 2012. The agency has issued 187 notices of violation to companies working in the region.

A recent flyover in the Eagle Ford Shale and Permian Basin in West Texas in July and August surveyed more than 16,000 tanks in the region and found 800 with emissions, which will lead to follow-up investigations, the TCEQ said.

But the Earthworks report says the intensity of drilling and the rapid development of the Eagle Ford is cause for concern. It says close spacing of wells, often 40 acres apart, can put multiple wells near someone's home.

“It also means: long periods of time during which wells are being drilled in close proximity to their homes; the addition of other facilities such as oil processing and waste disposal sites nearby; and increased truck traffic to service the ever-growing number of wells,” the report says. “As more and more wells and facilities come into an area, it becomes more and more likely that there will be accidental, scheduled and negligent releases of large quantities of toxic air pollutants.”

The study says the Eagle Ford has been developed more intensely than the Barnett Shale in North Texas, but has not had the same level of air monitoring by the state.

The TCEQ said it has collected “several millions of data points for volatile organic compounds” in the Barnett Shale and Eagle Ford Shale.

“Overall, the monitoring data provide evidence that shale play activity does not significantly impact air quality or pose a threat to human health,” the agency said in a statement. “The TCEQ has a vigorous, effective enforcement operation in the Eagle Ford Shale, and when problems are detected, the TCEQ makes sure they are rapidly fixed.”

The report also says state investigators evacuated one site to prevent their own exposure to volatile organic compounds, but didn't warn residents nearby. The TCEQ said Marathon Oil Corp. was notified of the problem at the production site and corrected it the same day.

The TCEQ said it has contracted with the [University of Texas](#) to monitor for volatile organic compounds and nitrogen oxides upwind and downwind of the Eagle Ford. The [Alamo Area Council of Governments](#) is also studying regional air quality.

Nucor permit battles continue on legal, regulatory fronts

DEQ office pushing EPA to detail its objections at 2 facilities

By AMY WOLD

awold@theadvocate.com

The state Department of Environmental Quality will need to decide in the next month on which court action to try next in an effort to get the U.S. Environmental Protection Agency to either find something wrong with permits for two facilities or remove their objections.

At issue are permits DEQ issued to Nucor for construction of a pig iron facility and a direct reduced iron plant in Convent. The most recent permit approval for both was made in January 2011. The reduced iron facility is within weeks of operation and the pig iron facility has been put on hold until the issues with EPA can be worked out.

After the permits were granted, the grain export business next to the Nucor property, Zen-Noh Grain Corporation, filed an objection to the permit with the EPA and eventually had to take the federal agency to court to force it to make a decision.

Environmental groups also filed objections saying that there should have been one permit to cover both facilities instead of each facility getting its own permit. There are rules in place to avoid having large facilities break up their operations under separate permits to get around having to follow more strict regulations for air quality. These "Prevention of Significant Deterioration" conditions are applied to facilities that release a certain amount of pollution.

In the Nucor case, both facilities had to go through this process anyway so there was no avoidance, said Sam Phillips, assistant secretary of DEQ.

However, when EPA received the objection petitions from the grain exporter and then from several environmental groups, EPA should have made a decision on whether to grant or deny those petitions. If the petitions were granted, Phillips said, EPA needed to point out where the permits violated the Clean Air Act. Instead, EPA asked for more information from DEQ and has not pointed out any deficiencies in the permits.

"That's not what the petition is for," Phillips said.

EPA public relations staffer Jennah Durant said the agency wouldn't be able to comment

on the permits or the issues raised by DEQ.

Last year, DEQ asked the 5th U.S. Circuit Court of Appeals to review EPA's objection to air permits that were issued to Nucor, to vacate EPA's objection and to issue a ruling listing how the EPA's objection was "improper for a variety of reasons."

The court issued a decision on Sept. 17 that essentially said the court couldn't make a decision because EPA hadn't made a decision on whether the permits should be issued or denied.

DEQ now has 30 days in which to make a decision on the next step. DEQ can either ask the 5th U.S. Circuit Court of Appeals to give the issue a rehearing, take the issue to district court or take it to the U.S. Supreme Court, Phillips said.

"The reason they're (EPA) using this approach is because no one has challenged them on it," Phillips said. "One of these two courts will have to stop EPA from using this tactic."

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Refinery Agrees to Pay \$8.75 Million For Failure to Comply With 2007 Settlement

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Enforcement

Refinery Agrees to Pay \$8.75 Million For Failure to Comply With 2007 Settlement



By Susanne Pagano

Sept. 20 — Under an amended consent decree, Total Petrochemicals USA Inc. agreed to pay an \$8.75 million penalty for failing to comply with requirements of a 2007 settlement that resolved alleged violations of the Clean Air Act at the company's refinery in Port Arthur, Texas (*United States v. Total Petrochemicals USA Inc.*, E. D. Tex., No. 1:07-cv-00248, 9/20/13).

Between 2007 and 2011, the refinery failed to comply with emissions limits for benzene as required under the settlement and failed to perform corrective actions or analyze the cause of more than 70 incidents involving emissions of hazardous gases through flaring, the Justice Department said.

The Environmental Protection Agency discovered the violations during a review of quarterly compliance reports required by the 2007 settlement, under which the company paid a \$2.9 million penalty and made upgrades to its refinery to reduce harmful air pollutants, prosecutors said. The refinery also was required to upgrade leak-detection and repair practices and put into effect programs to minimize flaring.

Under the amendment to the 2007 consent decree filed Sept. 20 in the U.S. District Court for the Eastern District of Texas, Total Petrochemicals agreed to report any emissions exceedances, reduce benzene wastes at the refinery and retain an independent third party compliance auditor, among other requirements.

The company further agreed to set up an internal consent decree compliance task force consisting of employees and/or contractors to ensure compliance.

The Sept. 20 amendment also added specific penalties ranging from \$500 to \$2,500 per day for violating terms of the consent decree.

DOJ said its action extends the requirement that Total Petrochemicals comply with a lower benzene emissions limit for an additional two years. The new limit for benzene, which is 30 percent lower than the federal limit, was initially required under the 2007 settlement.

The Port Arthur refinery produces transportation fuels, liquefied petroleum gas, and other products mostly shipped in the U.S. The refinery has a capacity of about 174,000 barrels per day of crude.

Total Responds to Settlement

In an e-mail to Bloomberg BNA, Total Petrochemicals said the penalties relate to the refinery's "misinterpretation" of reporting procedures to the EPA — all of which the refinery remedied immediately upon clarification.

A portion of the penalty comes from violations of benzene limits, Total said.

"While the refinery did not increase its benzene levels from the previous years, the penalties reflect a delay in satisfying a more stringent limit imposed by the U.S. EPA through the consent decree," the company said. Total Petrochemicals said the refinery made significant investments and modifications to comply with the more stringent limit, and results show that levels have consistently decreased since July 2007.

The consent decree was part of EPA's national refinery initiative to reduce air pollution from the vast majority of refineries nationwide, requiring new controls to significantly reduce emissions, Total said.

The amended consent agreement is subject to a 30-day comment period and final approval by the court.

To contact the reporter on this story: Susanne Pagano in Houston at spagano@bna.com

To contact the editor responsible for this story: John Sullivan at jsullivan@bna.com

For More Information

The amendment to the consent decree is available at http://www.justice.gov/enrd/ConsentDecrees/ENV_ENFORCEMENT-2396847-v1-TOTAL_PETRO_AMENDMENT_CONSENT_DECREE_LODGED.PDF.

Text of the Stipulation and Order is available at

http://www.justice.gov/enrd/ConsentDecrees/ENV_ENFORCEMENT-2396851-v1-TOTAL_PETRO_STIPULATION_AND_ORDER.PDF.

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Well - Tara Parker-Pope on Health

SEPTEMBER 20, 2013, 2:13 PM

The Arsenic in Our Drinking Water

By [DEBORAH BLUM](#)

The baby with the runny nose, the infant with a stubborn cough — respiratory infections in small children are a familiar family travail. Now scientists suspect that these ailments — and many others far more severe — may be linked in part to a toxic element common in drinking water.

The element is naturally occurring arsenic, which swirls in a dark, metalloid shimmer in soil and rock across much of the United States and in many other countries. It seeps into groundwater, but because the contamination tends to be minor in this country, for many years its presence was mostly noted and dismissed by public health researchers.

They've changed their minds. Long famed for its homicidal toxicity at high doses, a number of studies suggest that arsenic is an astonishingly versatile poison, able to do damage even at low doses. Chronic low-dose exposure has been implicated not only in respiratory problems in children and adults, but in cardiovascular disease, diabetes and cancers of the skin, bladder and lung.

Trace amounts in the body interfere with tumor-suppressing glucocorticoid hormones, studies show, which is one reason that arsenic exposure has been linked to a range of malignancies. Arsenic also interferes with the normal function of immune cells. It damages lung cells and [causes inflammation of cells in the heart](#).

Researchers first became aware of these problems in so-called hot spot countries like Bangladesh, where arsenic levels in water can top 1 part per million. Decades ago, public health agencies there sought to replace microbe-contaminated surface water with well water. Only later did geological surveys reveal significant aquifer contamination from bedrock arsenic.

Scientists now report health risks at lower and lower levels of exposure in that country. In July, researchers at the University of Chicago found that residents of Bangladesh chronically exposed to arsenic at a mere 19 parts per billion showed signs of reduced lung function. At levels of 120 p.p.b. or higher, their ability to take in oxygen [resembled that of long-term smokers](#).

"Bangladesh is unfortunately a living laboratory for the health effects of arsenic," said Habibul Ahsan, the lead author of the study and director of the Center for Cancer Epidemiology and Prevention at the University of Chicago.

Dr. Ahsan, a native of Bangladesh, is one of the organizers of a long-term study of arsenic and health in that country, which now has 30,000 people enrolled. In 2010, he reported that 24 percent of all deaths from chronic disease in his study population [could be attributed to drinking arsenic-contaminated well water](#).

"We need to take arsenic exposure very seriously," Dr. Ahsan said.

That seems to be today's watchword. Researchers have begun a widespread re-evaluation of arsenic as a public health threat not only in water, but in the food supply. The Food and Drug Administration [recently set a limit of 10 p.p.b. for arsenic in apple juice](#), and the agency is now evaluating the risks posed by [foods like rice](#), which tend to pick up arsenic from the soil. At the request of the Environmental Protection Agency, the National Academy of Sciences has begun an intensive review of arsenic risks. The academy study group is chaired by Joseph Graziano, a professor of environmental health sciences at Columbia University who researches [the link between arsenic in drinking water and cognitive deficits in children](#).

Researchers also are taking a much closer look at drinking water, from Southwestern states like Nevada, where wells sometimes contain arsenic at more than 500 p.p.b., to the upper Midwest and New England, where a belt of arsenic-infused bedrock taints aquifers in stretches from the coast of Maine to a point midway through Massachusetts. Water in parts of the Central Valley of California, America's breadbasket, has been [found to be tainted with arsenic as well](#).

While municipal water suppliers are required to meet the E.P.A.'s safety standard of 10 p.p.b. for arsenic in drinking water, [no such regulation exists for private wells](#). Nationwide, researchers say, about 13 million people get drinking water from private wells with arsenic levels above the federal standard.

And studies here are beginning to show a pattern of harm not unlike that seen in Bangladesh. One study of private wells in Michigan, tainted with arsenic in the 10 to 100 p.p.b. range, found increased mortality rates [linked to everything from diabetes to heart disease](#). Another focusing on cardiovascular disease in small communities is due to be published next week.

At Dartmouth College, the New Hampshire Birth Cohort Study is following women through pregnancy into parenthood, comparing the health of children in families drinking from private wells with those who rely on municipal water supplies.

In a study published in July in Environmental Research, researchers measured arsenic exposure during pregnancy and then tracked respiratory infections in infants up to four months of age. The higher the arsenic exposure in the mother, the scientists found, [the greater the number of respiratory infections in their infants](#), especially ones that required a visit to the doctor or prescription medicine.

The results describe a pattern similar to that seen in Bangladesh, where scientists have found [a greater than 50 percent increase in severe lower respiratory infections among infants of mothers with high levels of arsenic](#), compared with those with the least exposure.

"We were surprised to find the connection so visible at the lower exposures seen here," said Margaret Karagas, a Dartmouth epidemiologist and the senior author of the study. The Dartmouth pregnancy cohort study has also found a link between [low-level exposure to arsenic and low birth weight in infants](#).

"If people have private wells, they need to have them tested for arsenic," she said. "You want to know what's in your water." Meanwhile, Dr. Karagas and other experts are looking at the ways that arsenic in the food supply might add to an individual's cumulative exposure.

“We need to start looking at all the sources,” Dr. Ahsan said.

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Coastal Wetland Act still vital

By **AMY WOLD**

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The Coastal Wetland Planning, Protection and Restoration Act, passed by Congress in 1990, created a lot of firsts for Louisiana.

The act set up the first dedicated federal funding source for coastal restoration and formed a task force addressing, for the first time, how to build coastal restoration projects in Louisiana.

From its humble beginnings, the CWPPRA program became a catalyst for much of the coastal restoration efforts in the state by developing a coastal monitoring system, training a generation of coastal scientists, building projects to stem some of the worst erosion and providing an incubator for restoration projects.

But the role of the program is evolving. Now in its 23rd year, it faces limited funding for new projects and a current Congressional authorization set to end in 2019 — all at a time hundreds of millions of dollars in coastal restoration funding are available through sources outside CWPPRA's authority.

Nevertheless, many people involved in coastal restoration feel CWPPRA still has a role to play, getting restoration projects ready to be built even as the focus shifts to larger projects.

"CWPPRA has gone from the only game in town and it has evolved into a gap filler for the large basin-scale projects we're moving forward now," said Garret Graves, coastal adviser to the governor and the state's representative on the CWPPRA task force.

"This program plays a really critical role," he said, noting its dedicated funding and the role it plays in gathering federal, state and other information about restoration projects.

CWPPRA also ensures projects are consistent with the state's 2012 master plan for restoration.

Under the CWPPRA program, projects are funded through a 85 to 15 cost share, with the state picking up the 15 percent. Although the state can't vote on matters pertaining to federal funding allocations, it does have veto power over what projects can move forward, by agreeing, or not agreeing, to pay that 15 percent cost-share.

"The state is really tightening down where they're willing to spend the 15 percent support," said Tom Holden, deputy district engineer for project management with the



Photo provided by CWPPRA Public Outreach
The Bayou LaBranche Wetland Creation project is one of the first two projects through the Coastal Wetland Planning, Protection and Restoration Act reaching its 20th year in operation. Construction of the Bayou LeBranche Wetland Creation and the Cameron Prairie National Wildlife Refuge Shoreline Protection projects were completed in 1994.

U.S. Army Corps of Engineers' New Orleans district. "The master plan is driving that."

Graves added that the state has already been talking with the state's Congressional delegation to work on getting CWPPRA reauthorized sooner rather than later.

"There've been a lot of talk about bigger programs, but CWPPRA has been the one big source of funding," said Brad Inman, senior program manager for CWPPRA for the Corps of Engineers.

Initially, the CWPPRA task force had about \$30 million a year to spend on project design and construction in Louisiana. Now, that amount is up to \$80 million to \$85 million a year. Even so, that doesn't go very far because of the dramatic rise in construction costs since the 2005 hurricane season.

So far, the program has built about 100 projects and either saved or restored 100,000 acres of Louisiana coast, Inman said. There are about 13 projects under construction and another 45 in the process of engineering and design.

In the early days of the program, one hurdle was convincing people that coastal wetland loss was even occurring.

Widely recognized as the first to publish information about this loss, Woody Gagliano, owner of the Coastal Environments Inc. and a longtime coastal researcher, made waves in the early 1970s when he released results from a study that showed 16.5 square miles a year in land loss was occurring in south Louisiana.

"That was a shocker. No one believed it," Gagliano said. "My impression was contrary to popular opinion that the delta was still building land."

More than 20 years later, there was still disbelief, said Scott Wilson, chief of the special analysis branch with the U.S. Geological Survey at the National Wetlands Research Center in Lafayette.

"I remember sitting in a public meeting in 1994 where it was argued (whether) coastal land loss was even happening," Wilson said. "Back in the day, it was hard to convince people we had a wetland loss problem."

Creation of a plan

In 1987, a group of scientists, coastal residents and other activists — known as the Coalition to Restore Coastal Louisiana — published a report about what needed to be done. A big hurdle, the group soon learned, was that coastal restoration wasn't the responsibility of any single agency.

"There were a lot of things wrong with the coast

and there were a lot of things that could be done, but it was really nobody's job to do it," said Mark Davis, who served as the coalition's executive director for 14 years before becoming the founding director of the Tulane Institute on Water Resources Law and Policy in 2007.

In 1989, the state passed Act 6, which put in place the Governor's Office of Coastal Activities and set up a State Wetlands Authority and the Coastal Wetlands Trust Fund, which receives state oil and gas monies. The next year, Congress passed CWPPRA through the work of then-senators John Breaux and J. Bennett Johnston that dedicated part of a small-engine fuel tax for use in coastal restoration in Louisiana.

The act also set up a task force of representatives from five federal agencies — the Corps of Engineers, Environmental Protection Agency, Department of the Interior, Department of Agriculture and the Department of Commerce — and from the governor's office.

"The fact that it existed was significant," Davis said, noting that the birth of CWPPRA finally signaled that coastal restoration was indeed someone's job.

"It took awhile for everyone just to get in the same room and talk," said Brit Paul, assistant state conservationist for water resources with the Natural Resources Conservation Service.

CWPPRA forced the five federal agencies and the state to find ways to work together and develop a plan addressing coastal land loss.

Project incubator

"You don't have one agency bottlenecking something at the end," said William Honker, director of the water quality protection division at EPA Region 6 and a member of the CWPPRA task force. "Things get resolved much earlier in the process."

CWPPRA's first projects are now "aging out" of the program, forcing the task force to decide whether to find a local sponsor to take over maintenance and operation for the

projects, to continue funding the projects, to pay to remove some structures if they pose a potential hazards or to stop the funding but let the projects remain in place.

The first two of those projects reaching the 20-year mark are the Bayou LaBranche marsh creation project in the Lake Pontchartrain basin and the Cameron Prairie National Wildlife Refuge shoreline protection project. Built in 1994, both projects did well over the years. The recommendation is to keep the projects in place but stop additional funding and return any remaining monies to CWPPRA.

If CWPPRA's federal authorization ends in 2019, only a few years of actual project construction and design are left.

"There are currently more projects that are proposed than there is actually funding to address," said Col. Richard Hansen, New Orleans district commander with the corps. "Really, what (CWPPRA) has become over the last several years is an incubator for projects."

More and more, projects designed through the program have been taken over by other entities, mainly the state, for construction.

The state is now moving forward with a series of large-scale land-building projects, which take take a long time to plan and build, Wilson said.

In the meantime, he said, CWPPRA will continue to make strategic choices through what smaller projects it chooses to bolster key areas on the coast.

"Someone's got to protect these critical ecosystem features," he said.

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Daily News

With EPA Climate Rule On Stronger Footing, NAM Seeks Narrow Air Act Fixes

Posted: September 20, 2013

Industry groups are conceding that EPA's repropose greenhouse gas (GHG) rule for new power plants includes a more robust technical and legal basis for the policy than an earlier version, which could help it survive expected lawsuits, and are asking Congress to make narrow Clean Air Act fixes to limit the agency's power to regulate GHGs.

Conceding that the battle to bar EPA from regulating GHGs is lost, Ross Eisenberg, vice president of energy and resources policy at the National Association of Manufacturers (NAM), said on a Sept. 20 conference call that the group plans to seek three revisions to the scope of the air act to limit the scope of EPA's authority.

He said that EPA's Sept. 20 proposed new source performance standards (NSPS) for utilities will impose major costs and fears the agency will pursue similarly strict climate rules in the future for a host of other sectors including food distribution, refineries, chemical plants and more, given the existing text of the Clean Air Act and EPA's use of that language to justify the stringent utility NSPS.

"The Clean Air Act is ultimately unforgiving in this respect," he said.

In particular, the group wants three key limits on the agency's power: requirements for EPA to craft "subcategories" setting varying emissions standards for different types of units within a sector; "firm guidelines" on how EPA should address GHG limits in prevention of significant deterioration permits; and a new definition of when emission control technology is considered "adequately demonstrated" -- the standard for mandating it in an NSPS.

The climate rule for newly constructed power plants requires coal-fired utilities to install carbon capture and sequestration (CCS) technology, following a long-running fight between EPA and its critics over whether CCS can be considered adequately demonstrated. Climate NSPS foes say CCS is unproven and has high costs.

Joining NAM in its criticism, Senate Republicans on the Environment & Public Works Committee (EPW) warn that the rule fails to base the achievement of the standards on reliable and affordable technology, though EPW clean air subcommittee Chairman Tom Carper (D-DE) is vowing to fight any efforts to halt the regulation.

And House Energy & Commerce Committee GOP leaders are vowing to hold hearings on the climate NSPS and suggesting they might ultimately pursue legislation to block the power plant rule outright.

NAM is pushing the three key air law amendments to "draw some lines around what EPA can and can't do" under the air act, Eisenberg said on the Sept. 20 call with reporters.

NAM is also arguing that EPA violated the air law by failing to issue a finding on whether GHGs from utilities endanger public health and welfare, separate from its existing endangerment finding for vehicle GHG emissions that the agency used to justify its landmark fuel economy and GHG rules for passenger vehicles.

Yet EPA rejects this argument in the new proposal, noting it is only required to issue a new endangerment finding when it lists a new source category for regulation under the air law -- and that utilities are not a new category.

On the call, NAM's Eisenberg said EPA is using air law section 111 -- which outlines NSPS requirements -- "to effectively regulate a fuel type, and a design type, and despite the cost they are setting it as the law of the land." If the agency's rule survives legal challenge, that sets "a dangerous precedent for other sectors," he said.

Paul Bailey, senior vice president for federal affairs and policy at the American Coalition for Clean Coal Electricity, on a Sept. 20 conference call with reporters said the rule's fate "will be settled in the courts."

Legal Justification

Environmentalists and industry officials who have read the revised rule say it has been made more legally defensible than the initial proposal, as EPA has been able to respond to public comments highlighting legal weaknesses and now has a more robust set of technical data and more information about CCS technology.

The new proposal replaces an April 2012 proposed NSPS for newly constructed power plants, which also included CCS mandates for coal-fired plants. The new rule's more robust technical and legal basis includes separate standards for coal and gas plants, seen as improving its chances of surviving the expected lawsuits.

Other changes that have made it more legally defensible, sources say, include the agency's rationale for why it believes the technologies limiting carbon emissions from both coal and natural gas utilities meet statutory requirements in the Clean Air Act of being "adequately demonstrated," taking into consideration costs and energy requirements.

EPA's repropose NSPS maintains the 1,000 pounds per megawatt hour (lbs/MWh) carbon limit for large natural gas power plants that was proposed in the initial NSPS covering all utilities, while relaxing the limit slightly to 1,100 lbs/MWh for coal-fired power plants, a limit enforced on a 12-month rolling average that forces all new coal plants to include CCS. The NSPS also sets a carbon dioxide emissions limit of 1,100 lbs/MWh for small natural gas power plants.

The reproposal also eliminates a provision allowing newly constructed coal plants to operate for 10 years without CCS if their average emissions for a 30-year period remained at 1,000 lbs/MWh.

Under the repropose rule, new plants can meet a more stringent limit between 1,000 and 1,050 lbs/MWh over a seven-year rolling average, a change intended to allow plants to phase in CCS technology.

Coal and utility sector officials in the weeks leading up to the proposal had targeted their criticisms at the rule's CCS mandate because they say the technology does not meet a statutory requirement of being "adequately demonstrated," as no existing commercial coal-fired power plant is operating with CCS.

But EPA Administrator Gina McCarthy, at a Sept. 20 speech at the National Press Club in Washington, D.C., said that while many planned conventional coal plants are being canceled, plans to build coal plants that have the capability to sequester carbon have continued. She said these investments were a signal that the market recognizes the future will be a "carbon-constrained world."

"CCS is a technology that is feasible and it's available today, we know that. How do we know that? Because it's been demonstrated to be effective, we know that it's been demonstrated and that it's being actually constructed on real facilities today," McCarthy said.

Senior EPA officials also defended the CCS mandate in the revised rule. One official told reporters on a Sept. 20 call that the proposed standards "reflect the fact that there are various ways CCS can be applied" while noting that the proposal requires only partial CCS, estimated at between 30 to 50 percent of a plant's carbon dioxide emissions.

McCarthy in her speech acknowledged that EPA's decision to repropose the NSPS with subcategorized standards for coal and gas came after it received public comment and data about technologies that were available for the power sector and their effectiveness. "We did what democracy demands: We paid attention," McCarthy said. "We read those comments, we thought about them, and we decided that we needed to update the proposal."

'Adequately Demonstrated'

EPA in the rule and in statements argues that its mandate of CCS for coal will help drive -- and drive down costs -- of the technology. The agency also says that CCS meets a Clean Air Act requirement that an NSPS-mandated pollution control be the best system of emissions reduction (BSER).

One Clean Air Act expert says BSER is "meant to be technology-forcing," though there is currently no incentive for installing CCS at facilities because carbon is not priced or regulated. "There is a legitimate technical question about the viability of CCS but EPA has built a case that it is viable," the source adds.

Environmentalists dismiss the criticism that CCS is not adequately demonstrated, saying that since the Clean Air Act was enacted 40 years ago industry has been a "broken record" in its complaints about the high costs and technical challenges of air rules, raising similar arguments against unleaded gasoline, sulfur scrubbers and catalytic converters.

"In every instance when the government moved forward and set sensible standards based on the evidence that was in front of the agency, industry demonstrated they could comply," said David Hawkins, climate programs director with the Natural Resources Defense Council (NRDC) on a Sept. 20 conference call. "It's the exact same thing here."

Environmentalists also say that while industry argues that CCS must be "commercially demonstrated," the statutory requirement is only for it

to be adequately demonstrated, a standard they say CCS has already met.

Industry in their comments on the April 2012 rule faulted EPA's in its rule for setting a single carbon limit for coal and natural gas, with the agency only analyzing in detail how natural gas combined cycle power plants were BSER.

EPA in the new rule responds to some of those criticisms, setting the standards for coal-fired boilers and natural gas turbines under different subparts and analyzing BSER for both fuel types. But the agency is also seeking comment on setting the standards under a single subpart, as it did initially, asking whether that would provide it more flexibility in its upcoming NSPS for existing coal plants.

NRDC's David Doniger said his group will continue to push for EPA to set a single standard, because that "makes the most sense and leaves the most options open" for setting a flexible standard for existing power plants.

"It's cleaner to formally recognize that if [the standards are] all doing the same exact same thing, they all belong in the same group," Doniger said on the group's Sept. 20 conference call with reporters. - *Chris Knight* (cknight@iwpnews.com) & *Dawn Reeves* (dreeves@iwpnews.com)

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Feds promise to work with businesses on meeting emissions goals

By Julian Hattem - 09/20/13 01:21 PM ET

The Obama administration is pledging to help the energy sector meet new demands on power plant emission levels.

After the Environmental Protection Agency (EPA) released draft limits for the amount of greenhouse gases power plants are allowed to emit, Energy Secretary Ernest Moniz said that the administration is committed to helping pave the way for new technologies to make those restrictions easier to meet.

“To continue implementing the President’s Plan, the Department of Energy will work with our partners to further increase power plant efficiency across the range of generation types, promote advanced fossil energy technologies such as carbon capture, utilization, and storage (CCUS), and deploy more clean energy,” he said in a statement on Friday.

White House spokesman John Earnest confirmed that the government would work collaboratively with businesses to achieve the standards, which some have said would essentially ban new coal-powered electric plants.

“There is an opportunity for us to work with the industry to put in place the kind of rules that make their products better, that make their products safer, that encourage them, incentivize them to innovate ... that can have benefits not just for consumers but also for the general public and for the broader economy,” he told reporters.

The Energy Department is offering \$8 billion in loan guarantees to projects that help cut back on greenhouse gas emissions.

Since President Obama took office, the department has committed around \$6 billion to support "clean coal" efforts, Moniz said.

“These programs are part of a real all-of-the-above clean energy strategy for a low carbon future where efficiency, coal, natural gas, nuclear and renewable sources all have an important role to play, and can successfully compete in a global marketplace,” he added.

The proposed limits for coal plants will require a technology to capture and store carbon, which Republicans and energy companies have said is too expensive and not yet viable for the commercial market. However, the proposed rules also allow companies to average out their emissions over seven years as a way to phase in the technology.

Source:

<http://thehill.com/blogs/regwatch/energyenvironment/323693-feds-promise-to-work-with-businesses-on-meeting-emissions-goals->

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Coal-state Dem candidates rip Obama for new EPA rules

By Alexandra Jaffe - 09/20/13 04:53 PM ET

Coal-state Democratic candidates are lashing out at President Obama for new Environmental Protection Agency emissions standards that would squeeze the coal industry.

West Virginia Secretary of State Natalie Tennant and Kentucky Secretary of State Alison Lundergan Grimes, both Democrats running for Senate in their respective states, issued stern statements slamming the president for allowing the EPA standards, which would restrict emissions on future power plants, to go forward.

"Yet again, President Obama has taken direct aim at West Virginia's coal industry. This proposed regulation would effectively prohibit the construction of any new coal-fired plants. This regulation is bad for West Virginia coal miners, their families and communities across the coal fields," Tennant said in a release.

She added that she's "not afraid to take on leaders in my own party to protect West Virginia's coal industry."

Lundergan Grimes said she was "disappointed" at the ruling.

"After calling on the President to do the right thing, I am deeply disappointed in today's EPA ruling. Yet again President Obama's administration has taken direct aim at Kentucky jobs," she said.

In the same statement, however, Lundergan Grimes sought to lay the blame on incumbent Sen. Mitch

McConnell (R-Ky.), charging that the "dysfunction in Senator McConnell's Washington continues to fail Kentucky families."

Opponents say the new rules amount to a de facto ban on new coal plants, as the technology needed to comply with the standards isn't commercially available. The EPA and climate advocates disagree, and argue coal is on the decline largely because of decreased demand rather than government regulations.

But the Obama administration's climate policy could become problematic for the two candidates, both of whom are running in states where coal production plays a central role in the economy.

Republicans have been working all week to tie both candidates to Obama's policies, which they say amount to a "war on coal."

The National Republican Senatorial Committee hammered both Grimes and Tennant for the EPA rules, along with incumbent Democratic senators in Alaska, North Carolina and Louisiana and Reps. Gary Peters (D), running in Michigan's Senate race, and Bruce Braley (D), running in Iowa.

"It is plainly evident that electing Alison Lundergan Grimes would ensure that a sworn enemy of coal sets the agenda instead of a Kentuckian. And it will come as even less of a surprise when Grimes continues to loyally support the Obama administration who plans to impose a radical new EPA proposal," reads the release targeting Lundergan Grimes.

She has taken particular criticism from Republicans for receiving fundraising help from Senate Majority Leader Harry Reid (D-Nev.), referred to by the NRSC as the "sworn enemy of coal," who has previously said "coal makes us sick."

Republicans argue that she's beholden to Reid and other Democratic leaders, and her association with him will make it impossible for her to stand up to her party on issues like Obama's climate policy.

McConnell spent much of the week focused on the EPA standards, calling them the latest "administration salvo in its never ending war on coal" in a floor speech during which he called for a vote on a bill he introduced to prevent the rules from taking effect. Reid blocked the bill but acknowledged coal's importance to Kentucky.

Rep. Shelley Moore Capito, the likely Republican nominee for Senate in West Virginia, also introduced a bill to prevent the emissions standards from taking effect, and in a statement called them "yet another sign that this Administration simply doesn't care about ... harming the very fabric of communities across our state."

Source:

<http://thehill.com/blogs/ballot-box/senate-races/323767-coal-state-dem-candidates-rip-obama-for-new-epa-rules>

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Pollution rule hurts coal, helps other sources

Posted on **September 23, 2013 at 7:01 am** by **Associated Press** in **Coal, Politics/Policy**

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NEW YORK — Tough new limits on the amount of heat-trapping emissions new power plants can emit will likely accelerate a shift away from coal-fired power and toward electricity generated with natural gas, wind, and sunshine.

Power prices for homes, businesses and factories may eventually rise, and nuclear power could return to fashion.

The rule proposed by the Obama administration Friday will have little effect on the mix of power sources and electricity prices anytime soon because it only applies to new power plants and is likely to be challenged in court. Even so, market forces are already reshaping power markets in the same way the rule will. A boom in natural gas production in the U.S. has dramatically increased supplies, sent prices plummeting and prompted a shift away from coal.

The rule requires new coal plants to be built with extremely expensive equipment to reduce carbon dioxide emissions. That will make coal look prohibitively expensive to regulators and utilities planning for the future. By comparison, natural gas-fired plants, which emit half as much carbon dioxide as coal plants, along with wind turbines and solar panels, will look like a bargain.

Jason Bordoff, Director of Columbia University's Center on Global Energy Policy, called the rule "consistent with already evolving market trends toward the use of natural gas instead of coal" and described it as "cost-effective."

Nonetheless, it creates financial winners and losers. Here's how the landscape could change for companies and customers.

WINNERS

— Natural gas. Most new natural gas-fired power plants will stay within the rule's emissions limits without requiring new equipment. That means natural-gas fired plants — already by far the cheapest power plant to build and operate — will likely remain the top choice for utilities.

As utilities rely more on natural gas to generate electricity, demand for the fuel will increase and prices could rise. That would mean more revenue for domestic natural gas drillers such as ExxonMobil and Chesapeake Energy, drilling services companies such as Halliburton and Baker Hughes, and pipeline companies such as Spectra Energy and Kinder Morgan. It will also help makers of natural-gas fired turbines such as General Electric and Siemens.

— Renewable energy. Wind and solar developers, such as NextEra Energy and FirstSolar, may see increased demand for large projects, especially if power prices rise. That would also help rooftop solar installers such as Solar City attract more interest from homes and businesses.

— Nuclear power. Nuclear, like coal, has suffered from the low power prices brought on by cheap natural gas. Utilities have abandoned ambitious plans to build new nuclear plants and they've shut down aging plants that have become too expensive to run. If prices rise, nuclear operators such as Exelon and Entergy will benefit. And because the new rule makes new coal plants so expensive, utilities afraid of relying too heavily on natural gas for future power production may turn instead to nuclear.

— Power generators. If electricity prices rise as coal use declines, companies that sell wholesale electric power, such NRG Energy and Calpine, may benefit.

LOSERS

— Coal miners. The U.S. coal industry is already struggling because coal supplies piled up and prices dropped as natural gas gained favor. U.S. production is expected to fall to a 20-year low this year, and 151 mines that employed 2,658 workers were idled in the first half of this year, according to SNL Energy.

While coal will continue to be an important fuel for electricity generation in the U.S. for decades, it appears to be facing a long, slow decline. The country will get less and less coal from the comparatively high-cost Appalachian region, and more from cheaper-to-access coal deposits in the Illinois Basin and in Wyoming. Companies with large Appalachian operations, such as James River Coal and Alpha Natural Resources, will likely continue to suffer.

— Electric customers. Natural gas prices generally dictate the price of all electricity in the U.S. If demand for natural gas rises faster than drillers supply it, the price will rise and drag power prices up too, possibly boosting electric bills for homes and businesses. In the past, natural gas prices have been extraordinarily volatile.

Industrial companies, who have used low power prices in the U.S. as a competitive advantage, are concerned. The National Association of Manufacturers said in a statement Friday that the rule will "hurt competitiveness and job creation."

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ANALYSIS-U.S. industry sees carbon-capture as legal chink in EPA rules

Reuters

12:09 PM CDT, September 20, 2013

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By Valerie Volcovici

WASHINGTON, Sept 20 (Reuters) - Faced with the Obama administration's new crackdown on power plant emissions, the coal and electric utility industry is honing a legal strategy it believes could derail the measures.

New rules governing the construction of fossil fuel power plants, unveiled by the Environmental Protection Agency on Friday, have closed one of the largest legal loopholes of the initial regulations put forward in 2012, by providing separate standards for gas- and coal-fired plants.

Now, opponents have another tactic in mind: challenging the idea that carbon capture and storage (CCS), a decades-old but commercially tenuous technology that will be a requisite for any company building a new coal-fired power plant, is a viable solution to curbing greenhouse gases.

Under the Clean Air Act, the basis for the newly proposed rule, the EPA is required to set pollution standards using the "best system of emission reduction" with technology that has been "adequately demonstrated."

That language is likely to sit at the core of any lawsuit that could be filed by industry lawyers at the end of what could be a months-long rulemaking process.

"They tried one approach that is legally flawed," said Jeff Holmstead, a lawyer representing coal industry groups for Bracewell & Giuliani, referring to the EPA. "They are doing something else that can be struck down in court."

The requirement to implement carbon CCS technology "does not in our view comport with the requirements of New Source Performance Standards under the Clean Air Act," the American

Public Power Association, a group that represents electric utilities, said in a statement.

GOVERNMENT SUPPORT

The EPA's new rule says any new coal plant built in the United States must be able to emit at a rate of no more than 1,100 lbs of carbon dioxide per megawatt hour. That is far below an estimated 1,700 to 1,900 lbs/MWh for the most efficient plants currently in operation anywhere.

A new plant that uses CCS would capture carbon from the smoke stack, inject it underground and either store it or use it in an oil recovery process.

Opponents of President Barack Obama's efforts to forge ahead with measures to reduce greenhouse gas emissions have had a mixed track record in challenging EPA rules in federal courts.

The D.C. circuit court, the second-most powerful in the country, upheld in 2012 the EPA's landmark greenhouse gas regulations, which underpin all future emission curbs.

But a coalition of business groups and Republican-leaning states has taken the fight against Obama administration climate change regulations to the U.S. Supreme Court.

The high court is expected to announce by Oct. 1 whether it will accept any of their challenges.

NEXT BATTLEGROUND

The next battleground will be in Kemper County, Mississippi, home to a 524 MW power plant and the first commercial-scale CCS power project to start operation in the United States. The Kemper plant is expected to capture carbon at a rate of 65 percent when completed.

The EPA says Kemper, due to come online in 2014, shows that the technology is close to being commercially viable. Industry groups say the fact that its cost has risen by 40 percent to \$2.8 billion, and has received Department of Energy financial support for nearly 10 percent of that, shows the opposite.

"The data doesn't exist to show that CCS is achievable and represents the best demonstrated technology for commercial-scale utility plants," said Peter Glaser, an attorney for law firm Troutman Sanders, which represents industry clients.

Glaser added that the project's location near oil fields enables that plant to use carbon to recover oil underground and is not something that can be replicated widely.

"Most of the country is not located next to an oil field and the infrastructure doesn't exist for transporting and storing the CO₂. We would have to build out a network of CO₂ pipelines and significant storage facilities," he said.

Joe Stanko, an attorney for Hunton & Williams who represents industry clients, said the fact that a project like Kemper needs so much federal support means that the technology does not meet the Clean Air Act's own requirements. It has received \$270 million in financial support from the DOE.

"EPA's reliance on federally funded demonstration projects is illegal - it doesn't 'adequately demonstrate' technology for normal use," he said. "NASA sent men to the moon with federal funds. That doesn't mean municipalities and companies can do it."

There are currently six large-scale carbon capture projects under way in the United States. Five of those projects receive some percentage of DOE funding.

TRAILBLAZER OR HOUSE-BURNER

Supporters of the EPA action think that the government has confidence in the nascent CCS technology.

"Once Kemper is up and running, the technology will work. The transportation and storage points have been deployed and are considered commercially advanced today," said Patrick Falwell, a senior fellow at the Center for Climate and Energy Solutions.

The fact that the EPA changed its original emissions proposal to give plants seven years, rather than the 30 years proposed last year, to reach the new emissions targets suggests EPA has full confidence in CCS.

"We now have enough info and confidence to say that a CCS option with coal meets the test of being the best system of emission reduction," said David Doniger, policy director of the Natural Resources Defense Council's Climate and Clean Air Program told Reuters.

Some argued that the coal industry is at fault for the failure to develop CCS after having lobbied to prevent legislation that would have raised up to \$60 billion to support the deployment of the technology by 2035.

The Waxman-Markey bill, which would have created an economy-wide carbon cap-and-trade system, would have set aside a certain portion of emission permits to fund CCS. The bill passed the House in 2009 but a companion died in the Senate in 2010.

"It's as if they intentionally burned down their house and then complain about being homeless," said Daniel Weiss, director of climate strategy at the liberal Center for American Progress.

(Editing by Ros Krasny and Matthew Lewis)

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THE BEST WAY TO TRACK CONGRESS

2. FEDERAL WORKFORCE:

Shutdown looms but agencies tight-lipped as Congress struggles to keep government running

Emily Yehle, E&E reporter

Published: Friday, September 20, 2013

In a little more than one week, Congress will hit its deadline to fund the federal government -- and agencies could be forced to put hundreds of thousands of employees on unpaid leave.

But officials are still saying next to nothing about their plans for a government shutdown. The White House on Wednesday told agencies to update their contingency plans; now officials are scrambling to determine which employees can keep their paychecks if lawmakers fail to pass a stopgap spending bill by Oct. 1 ([Greenwire](#), Sept. 18).

If the past is any indication, agencies will plan to put whole offices and departments on pause, ceasing everything from permitting work at U.S. EPA to access at national parks.

But the shutdown won't be universal. Some employees will be exempted under federal law -- and that's where the uncertainty comes in.

At EPA, a 2011 shutdown plan outlined the retention of 1,693 employees, out of the agency's total workforce of about 17,000. That included 206 who were "engaged in military, law enforcement or direct provision of health care activities." The agency determined that an additional 649 were ensuring the safety of life and property, meaning they could stick around, too.

Perhaps the most fluid number represented those employees whose salaries came from "a resource other than annual appropriations." In 2011, that number was 838; today, with sequestration and an on-and-off-again hiring freeze, it could be far different.

Plans get even more confusing at the Interior Department, which is home to about 70,000 employees and nine bureaus with distinctly different missions. In 2011, the department planned to initially furlough about 52,500 employees out of 68,900. Longer-term plans called for the furlough of 2,500 additional employees.

At the time, Interior warned that national parks and public lands would be closed. Most scientific work at the U.S. Geological Survey would cease, along with onshore oil and gas leasing, most coal mining oversight and renewable energy permits, among other things.

But the department also tagged many of its actions as exempt from a shutdown. The exemption for emergency services, for example, would mean the continuation of earthquake monitoring, law enforcement activity and firefighting. Several programs were also funded through either fees or multiyear appropriations, such as offshore energy development permitting and a few grant programs at the Fish and Wildlife Service.

The Department of Energy is even more of a wild card. When the government seemed poised to shut down in April 2011 -- thanks then, as now, to the impending expiration of a continuing resolution -- DOE announced that it would be able to keep its doors open.

At the time, the agency said it could use some no-year funds to keep afloat for a few days. It was never tested: Congress and President Obama agreed to a spending deal at the last minute.

A DOE spokesman did not respond to a request for comment about an updated shutdown plan. Other agencies referred all questions to the Office of Management and Budget, which released a blanket statement emphasizing that the administration "strongly believes that a lapse in appropriations should not occur."

"However, at this time, prudent management requires that the government plan for the possibility of a lapse and OMB is working with agencies to take appropriate action. This includes agencies reviewing relevant legal requirements and updating their plans for executing an orderly shutdown, as outlined in the guidance OMB issued [Tuesday]," the agency said in the statement. "This planning is consistent with what was done in previous instances where a potential lapse in appropriations was approaching."

Indeed, in 2011, agencies waited until the day before a potential shutdown to release detailed plans. And despite several false alarms since then, those plans have stayed hypothetical; the government hasn't had a shutdown since early 1996.

At that time, the government furloughed about 800,000 employees for five days, according to a recent report from the Congressional Research Service. A subsequent "partial shutdown" lasted for 21 days and led to the furlough of 284,000 employees.

But many things are different today -- including the question of whether Congress will authorize retroactive pay, as it did in 1996. House Republicans have waged a years-long fight to cut back on the number of federal employees and the amount they are paid, making such a move increasingly uncertain.

And according to CRS, "there appears to be no guarantee that employees placed on shutdown furlough would receive such pay."

"This may be the case, because if furloughed employees are prohibited from coming to work during a shutdown, the government arguably would not be incurring a legal obligation to pay them," CRS analysts wrote. "Several considerations, including personnel costs, productivity, and retention, might be weighed when assessing the issue of retroactive pay for furloughed staff."

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Is Brazilian sugarcane the answer to U.S. biofuel needs?

Ethanol made from sugarcane may be able to supplement corn-based ethanol produced in the United States, which would help meet U.S. government targets for increased biofuel consumption.



U.S.-made 1952 Chevrolet car. Brazil believes ethanol made from sugarcane can supplement corn-based ethanol produced in the United States.
(Desmond Boylan/Reuters/File)

By GreenCarReports

posted September 21, 2013 at 2:00 pm EDT

Is Brazilian sugarcane the perfect biofuel for American drivers?

Brazil believes ethanol made from sugarcane can supplement corn-based ethanol produced in the United States, which would help meet U.S. government targets for increased biofuel consumption.

Under the Energy Independence and Security Act of 2007, the U.S. is required to gradually increase the consumption of biofuels. The goal is to increase production from 4.7 billion gallons per year in 2007 to 36 billion gallons per year in 2022.

As of August 31, Brazil has shipped 330 million gallons of sugarcane ethanol to the U.S., compared to 267 million gallons during the same period in 2012.

Brazil exported a total of 403 million gallons to the U.S. last year.

Those exports can now compete head-to-head with U.S. ethanol produced from

corn. In December 2011, Congress ended most ethanol subsidies, including a protective tariff of 54 cents per gallon on imported ethanol.

Two groups are working to promote sugarcane for use as a biofuel: UNICA, the trade group that represents the Brazilian sugarcane industry, and the Brazilian Trade and Investment Promotion Agency (also known as Apex-Brasil), a government agency focused on economic development.

One advantage sugarcane ethanol has over corn-based ethanol is in productivity. One acre of crops produces roughly 300 gallons of corn ethanol, but the rate for sugarcane ethanol is closer to 600 gallons per acre.

Importing ethanol could also help sidestep criticism over domestic ethanol production's impact on food production, land use, water consumption, and carbon emissions.

Still, it's difficult to tell whether Americans will want any of that extra government-mandated ethanol.

AAA has resisted the introduction of E15, a blend of 15 percent ethanol and 85 percent gasoline, claiming that it is not compatible with most vehicles--despite EPA certification of E15 for use in 2001 and newer vehicles.

A recent poll--conducted by biofuels advocacy group Fuels America--shows significant consumer interest in ethanol-gasoline fuel blends.

Eighty-two percent of respondents claimed they supported having E15 at gas stations; 76 percent said they would use blends with more ethanol.

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City: Diesel fuel leaked into Santa Fe reservoir

Posted at: 09/22/2013 11:13 AM

By: Mike Anderson, KOB Eyewitness News 4

SANTA FE, N.M. (AP) - Officials say a small amount of diesel fuel has leaked into one of Santa Fe's municipal reservoirs.

Water utility director Nick Schiavo told the [Santa Fe New Mexican](#) that city water staff and the city contractor responsible for the spill worked to clean it up Friday and Saturday.

RMCI, a contractor hired by the city to take down an old water intake tower in the Nichols Reservoir and build a new one, had been draining water from Nichols into the Santa Fe River since early September before beginning demolition of the old tower.

The contractor brought in a diesel-powered pump to suck out the remaining water and pipe it into the river.

But a line running from a 50-gallon barrel of diesel fuel near the reservoir began leaking.

Information from: The Santa Fe New Mexican, <http://www.sfnewmexican.com>

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Daily News

EPA Unlikely To Meet Deadline For Rule Scrapping 'Upset' Emission Policy

Posted: September 20, 2013

EPA is "unlikely" to meet a looming Sept. 26 settlement agreement deadline to finalize a rule to force 36 states to rewrite their air plans to scrap Clean Air Act penalty exemptions for "upset" emissions during startup, shutdown and malfunction (SSM) periods that violate emissions limits, says acting EPA air chief Janet McCabe.

If the agency fails to meet its deadline, it would violate the terms of a longstanding settlement agreement that EPA initially reached with the Sierra Club in 2011 -- the deadlines of which have since been modified four times -- that the agency would finalize a response to their petition seeking changes in SSM policies by Sept. 26. Environmentalists want EPA to scrap the provisions, citing a D.C. Circuit ruling in 2008 that said the exemptions are unlawful.

McCabe, responding to a question at meeting of the air committee of the Environmental Council of the States at a Sept. 17 meeting in Arlington, VA, gave EPA's first public acknowledgment that it was likely to miss the deadline. McCabe she she didn't have a final date for when she expected the "complex" rule to be complete, adding, "It's going to take a while to work through" public comments EPA received from states and industry on the rule.

In an interview with *Inside EPA* after the meeting, McCabe confirmed that it was "unlikely we'll meet that Sept. 26 deadline" and said the agency is talking with environmentalists about the deadline in the settlement agreement.

An EPA spokeswoman says the Sept. 26 settlement deadline remains in effect, and an attorney for the Sierra Club declined to comment on whether they are involved in negotiations with the agency over the deadline.

State and industry sources have said recently that it has been appearing increasingly unlikely that EPA will meet the settlement deadline for the SSM rule, as White House Office of Management and Budget (OMB) records have shown the final rule has not yet been received for formal interagency review, a process that can take weeks or months to complete. As of press time, the SSM final rule did not appear to have been sent for OMB review.

Sources closely tracking the rule say that with EPA and White House officials largely silent about the status of the the SSM rule, they suspected that EPA has been trying to negotiate an extension with environmentalists.

"It's been in the cone of silence" an industry source said earlier this month. "We suspect, but don't know, that EPA may be seeking an extension" to the settlement agreement.

A state official tracking the rule said recently that "if OMB hasn't gotten the rule yet, the odds of EPA's actually getting it out by [Sept. 26] now appear slim indeed" given the need for inter-agency review of the rule prior to its publication in the *Federal Register*.

An industry attorney recently also noted that EPA has made "very late submissions to OMB" and still might be able to meet their deadlines; while reviews can take up to 90 days, they sometimes can take much less or much more time. "The proposed rule has already been through OMB, so if the final hasn't changed much (and I don't expect it to change much), perhaps OMB would still have time to approve."

Proposed Rule

[The rule as proposed Feb. 22](#) would force 36 states to remove SSM exemptions from their state implementation plans (SIPs) for complying with the Clean Air Act within 18 months using a regulatory mechanism known as a "SIP call." Among the problems EPA found in the existing SIPs were provisions that gave the state discretion to exempt upset emissions and other allegedly unlawful exemptions, which the agency said were remnants from approvals decades ago.

Officials from industry and many effected states have generally come out against the SSM rule, saying it is not always possible to control emissions during startup and shutdown, as some pollution control technologies only work effectively when they reach a certain temperature.

If the settlement deadline for the SSM rule were to change, it would be far from the first time it has happened. The SSM rulemaking launched after environmentalists petitioned EPA to remove the SSM exemptions in 2011.

After EPA did not respond to the petition, environmentalist sued, with a settlement agreement requiring EPA to respond to the petition by Aug. 31, 2012. Subsequent amendments to the consent decree pushed back EPA's initial response to the petition by about a month to Oct. 1, then Oct. 15, Dec. 14 and finally Feb. 12. Then, after proposing the rule, EPA on May 5 negotiated an extension to push back the deadline for a final rule from Aug. 27 to Sept. 26.

If EPA is not able to renegotiate the deadline with the Sierra Club and breaches the deadline, the settlement agreement says environmentalists can reinstate *Sierra Club et al. v Jackson*, a lawsuit it filed in 2010 in the U.S. District Court in the Northern District of California that environmentalists agreed to close in light of the settlement agreement.

Sierra Club is related to the agency's alleged failure to take "long-overdue non-discretionary duties" of proposing and finalizing federal plans taking over allegedly deficient state implementation plans (SIPs) for complying with the Clean Air Act, along with EPA's alleged failure to take action on many SIP submissions.

Environmentalists in the settlement agreement with EPA agreed that the agency was not obligated to take action on alleged deficiencies related to the "infrastructure" portions of SIPs for the 1997 ozone national ambient air quality standards, but that part of the agreement no longer applies if EPA fails to meet the deadline.

Further, environmentalists agreed not to file motions finding EPA in violation with existing consent decrees in two other lawsuits, *Sierra Club et al. v. Jackson* pending in D.C. district court and *WildEarth Guardians v. Jackson* pending in Colorado district court, but a missed deadline would remove this limit. If environmentalists decide to go back to court and argue that EPA is in violation of these consent decrees, agency officials could be found in contempt of court.

A meeting environmentalists held with EPA's McCabe in August offering their support behind the SSM rule may have been an early sign of a possible delay associated with the rule.

The purpose of holding the meeting, according to an environmentalist in attendance, was to encourage the agency "just to get this rule over the finish line . . . we just want them to get it done this year." However, at the time, the environmentalist said their request for the meeting should not be taken as a sign that the final rule would be delayed.

'Affirmative Defense'

Meanwhile, EPA on Sept. 6 proposed to approve a change Oklahoma requested in 2010 to its SIP that switches from a broad exemption for excess emissions during SSM to what is known as an "affirmative defense," though the agency's proposed approval is limited to malfunctions. EPA disapproved the state's request to allow affirmative defense provisions to apply during startup and shutdown events.

An affirmative defense allows sources to be exempted from penalties for excess emissions if they can demonstrate the emissions were unavoidable and not a result of inadequate planning. As it has in many recent rules, EPA explains in the Sept. 6 rule that the agency believes that because startup and shutdown events are normal procedures at industrial facilities, there should not be an affirmative defense.

Oklahoma was also identified in the larger SIP call affecting 36 states, so the agency in the rule says that for consistency, the state would need to make the requested changes in its SIP by the 18-month deadline established in the large SIP call, assuming that rule is finalized. --
Chris Knight (cknight@iwpnews.com)

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